IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-85

BALDWIN COUNTY ELECTRIC MEMBERSHIP CORPORATION, ET AL., and CITY OF LUVERNE, ET AL., *Petitioners*

v.

PRICE COMMISSION, ET AL., COST OF LIVING COUNCIL, CHAIRMAN OF THE COST OF LIVING COUNCIL, and ALABAMA POWER COMPANY, *Respondents*

On Petition for a Writ of Certiorari to the Temporary Emergency Court of Appeals

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PETITIONERS' REPLY

One matter in Alabama Power Company's Brief in Opposition warrants a word of reply.

The Company (Br. Opp., pp. 8-11) contends that petitioners were obliged to file with the Price Commission a request for reconsideration, and that not

having done so, petitioners are foreclosed from obtaining judicial review. This matter, fully briefed in the courts below, was not decided by the Temporary Emergency Court of Appeals but, in our view, the Company's claim on this point is utterly lacking in merit and would be no obstacle to a summary judgment in petitioners' favor.

As our Petition for Certiorari (p. 10, note) indicates, we assume that, if this Court reverses the judgment, then this Court may wish the Temporary Emergency Court of Appeals to rule in the first instance on this contention of the Company. Nevertheless, since the Company's contention turns partly on proper interpretation and application of Price Commission procedural regulations, it seems appropriate to inform the Court that, in the two courts below, the Department of Justice (as the Price Commission's counsel) made clear its position that this particular contention by the Company was without merit and that petitioners were not required to request reconsideration at the Price Commission as a prerequisite to the judicial review sought here (in the District Court, see Government's Memorandum In Support Of Defendants' Cross Motion For Summary Judgment, pp. 16-17; in the Temporary Emergency Court of Appeals, see Supplemental Brief For The Government Appellees, pp. 9-11). Indeed, the Department of Justice took the unequivocal position that, under the Price Commission's regulations, petitioners were not in the class of persons having a right to further administrative review but must come directly to court for relief.

All other matters in the Company's Brief in Opposition and in the Government's Memorandum in Op-

position are sufficiently dealt with in our Petition for Certiorari.

Respectfully submitted,

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